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硕 士 学 位 论 文

论被害人谅解在死刑案件中的适用与限度

Talk about the Victim Understanding is in the Death Penalty
Case of Apply with Limit

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内容摘要

在我国现有的刑事法律和政策框架下，绝大多数的死刑案件是“命案”，被害人的家属作为犯罪后果的直接承受者，对犯罪行为有切肤之痛，在此情形下，被害人家属的反应态度就在一定程度上表征了犯罪的社会危害性。所以，当被害人家属对被告人表示谅解，一定程度上反映了犯罪社会影响的减弱。通常情况下，谅解是在被告人积极赔偿，认罪、悔罪为前提的，在一定程度上也反映了被告人人身危险程度的变化。因此，被害人谅解作为司法实践中重要的酌定量刑情节，对于死刑案件被告人的刑事责任具有重要影响，但这种影响是有限度的，应当理性而节制地考量这种影响，以防止“以钱买命”等负面形象的出现。首先，要通过谅解主体、谅解的实质内容、谅解形式等方面，界定死刑案件中被害人谅解的特征；其次，在理论上容易与之混淆的被害人影响陈述制度、刑事和解制度、民事赔偿、被害人量刑建议权等概念，进行相互对比，并从中发现被害人谅解的真实属性和独立价值，为理论建构打造坚实的基础；再次，刑事立法、政策制定以及司法实践现状的分析，可以让我们清醒地认识到被害人谅解在死刑案件适用中如何影响被告人的刑事责任及存在的问题；最后，要构建死刑案件被害人谅解适用规则，既合理发挥又理性限制被害人谅解在死刑案件量刑中的影响力，平衡刑法的平等性和刑罚的个别化，维护法律的威严。

关键词：被害人谅解 死刑案件 刑事责任 适用规则

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ABSTRACT

At our country existing pertaining to crime law and under the policy frame, the death penalty case of great majority is "homicide case", the family members of victim are crime results of direct bear, have the pain that slice the skin to the criminal offence, in this case, the reaction attitude of victim family members to some extent token crime of social harm. So, when the victim family members meant an understanding to the person of accused and reflected the weakening of social influence of committing crime in the certain degree. Usually under the circumstance, the understanding is to actively compensate at the person of accused, the cop-out, regrets offense is antecedent of, also reflected the variety of accused everyone body dangerous degree to some extent. Therefore, victim understanding Be judicatory practice metered Xing details in the considering of importance, have important influence to death penalty case accused person's pertaining to crime responsibility, but this influence is a limited degree of, should be rational but the forbearance ground consider this influence, in order to prevent "buy a life by money" wait the emergence of negative image. First, pass to understand the substantial contents of the corpus, understanding, understand aspects like form, etc, in the definition death penalty case the characteristic of victim understanding; Secondly, theoretically easy with of the victim confusing influence to illustrate system, pertaining to crime to reach agreement concepts like the system, civil case indemnification and victim quantity Xing suggestion power, etc and carry on mutually to this, and discover from it victim understanding of true attribute and independently value, create solid foundation for theory construction or purchase; Again, the pertaining to crime lawmaking, policy draws up and the judicatory practices the analysis of present condition, can make us awake ground of know to apply in the death penalty case to the victim understanding in how influence accused person of pertaining to crime responsibility and the problem of existence; End, set up the death penalty case victim understanding apply rule, since reasonable exertion again rational restriction victim understanding measures the influence in the Xing in the death penalty case, the equal and separately turning of the penalty of equilibrium penal code, support the dignity of law.

Key Words: The victim understands; Death penalty case; Pertaining to crime responsibility; Apply rule.

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